STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHAWNTELL TENNELL BARLOW,

Defendant-Appellant.

UNPUBLISHED
November 27, 2007

No. 272534
Calhoun Circuit Court
LC No. 06-001434-FH

Before: Donofrio, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of resisting and obstructing a police officer, MCL 750.81d. The trial court sentenced defendant as an habitual offender, second offense, MCL 769.10, to six months' imprisonment. Because the prosecutor presented sufficient evidence to support her convictions and because defense counsel was not ineffective at trial, we affirm.

On March 5, 2006, Officer Jeff Glerum pulled defendant Shawntell Barlow over in her vehicle. There was an outstanding warrant for defendant's arrest. Officer Glerum recognized defendant as the driver of the vehicle because he "had previous contacts" with her. Defendant drove into her driveway, got out of the car, and walked toward the front door of her home. Officer Glerum advised defendant that she was under arrest. He ordered her to put her hands behind her back and she refused to comply. Three additional police officers arrived on the scene to assist in the arrest. Eventually, the officers were able to handcuff defendant and take her into custody.

Defendant first contends that there was insufficient evidence to support her convictions of resisting and obstructing a police officer. We review de novo challenges to the sufficiency of evidence in a criminal trial. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). In reviewing the sufficiency of the evidence, we "must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999), quoting *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992).

To sustain a conviction for resisting and obstructing a police officer, the prosecution was required to prove, beyond a reasonable doubt, that defendant assaulted, battered, wounded,

resisted, obstructed, opposed, or endangered a person that she knew or had reason to know was performing his or her duties as a police officer. MCL 750.81d; *People v Ventura*, 262 Mich App 370, 376; 686 NW2d 748 (2004). "Obstruct" includes "the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command." MCL 750.81d(7)(a).

Officer Glerum testified at trial that he advised defendant multiple times that she was under arrest. He ordered her to place her hands behind her back and she failed to comply with his commands. Officer Glerum sprayed defendant with pepper spray and delivered a "leg sweep" to bring her to the ground. He attempted to place defendant in handcuffs when she was on the ground but she put her hands underneath of her body to prevent him from handcuffing her. In response, Officer Glerum used "pressure points" and sprayed defendant with pepper spray a second time. However, defendant continued to resist his attempts to handcuff her. When Officer Roth arrived, he instructed defendant to put her hands behind her back and she failed to comply with his commands. Officer Roth testified that defendant struggled with him and attempted to pull her hand back so that the officers could not place her in handcuffs. The officers tasered defendant two times in the leg and were then able to handcuff her. This evidence was sufficient to prove that defendant resisted or obstructed the officers. See *People v Nichols*, 262 Mich App 408, 413; 686 NW2d 502 (2004).

Further, the officers were in full police uniform and drove marked police cars. Officer Glerum activated the overhead lights on his car when he pulled defendant over. He informed defendant she was under arrest on an outstanding warrant. This is sufficient evidence to enable a rational trier of fact to find that defendant knew or had reason to know that, during this incident, the officers were performing their duties as police officers. *Nichols, supra*.

Defendant also argues that the prosecutor failed to present sufficient evidence to prove beyond a reasonable doubt that she intended to resist the arrest. But resisting and obstructing a police officer is a general intent crime. *People v VanWasshenova*, 121 Mich App 672, 680; 329 NW2d 452 (1982). Thus, the prosecution was not required to prove that defendant had the specific intent to resist the arrest.

Defendant next contends that defense counsel was ineffective for failing to object to certain evidence or move for a mistrial. She specifically challenges Officer Glerum's testimony that he recognized defendant because he "had previous contacts" with her. Defendant did not object to the challenged testimony at trial and did not move for a new trial or evidentiary hearing. To prove that counsel was ineffective, a defendant must show that "counsel's performance fell below an objective standard of reasonableness, and that the representation so prejudiced the defendant as to deprive him of a fair trial." *Strickland v Washington*, 466 US 668, 686; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298, 303; 521 NW2d 797 (1994). A defendant must overcome the strong presumption that counsel was effective and must establish "'a reasonable probability that, but for counsel's unprofessional errors, the result would have been different.'" *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999), quoting *People v Johnson*, 451 Mich 115, 124; 545 NW2d 637 (1996).

Defendant asserts that Officer Glerum's testimony was inadmissible bad acts evidence under MRE 404(b)(1), that provides:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same it material, whether such crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

It is defendant's position that the jury could have inferred, from that testimony, that defendant committed other crimes or that she was a bad person. "Evidence of extrinsic crimes, wrongs, or acts of an individual generally is inadmissible in a criminal prosecution to prove that the defendant possessed a propensity to commit such acts." *People v Hall*, 433 Mich 573, 579; 447 NW2d 580 (1989). However, contrary to defendant's argument, MRE 404(b) does not apply. Officer Glerum's testimony was not evidence of extrinsic crimes, wrongs, or acts. He did not testify about any specific acts or instances and his testimony did not implicate defendant in any other crime. Rather, the testimony was relevant and admissible to give the jury an "intelligible presentation of the full context in which disputed events took place." *People v Sholl*, 453 Mich 730, 741; 556 NW2d 851 (1996). For the same reasons, Officer Glerum's testimony did not warrant a mistrial. "A motion for a mistrial should be granted only for an irregularity that is prejudicial to the rights of the defendant and impairs the defendant's ability to get a fair trial." *People v Lugo*, 214 Mich App 699, 704; 542 NW2d 921 (1995).

Defendant also argues that the testimony was unduly prejudicial because it was given by a police officer. Our review of the record reveals that defendant has made no showing that the evidence was unfairly prejudicial such that it should have been excluded under MRE 403. And, the trial court instructed the jury that it should not give more weight to a police officer's testimony than any other witness. Jurors are presumed to follow their instructions. *People v Bauder*, 269 Mich App 174, 190; 712 NW2d 506 (2005).

Defendant failed to establish that Officer Glerum's testimony was inadmissible or otherwise objectionable. Accordingly, defense counsel was not ineffective for failing to object at trial. "Defense counsel is not required to make a meritless motion or a futile objection." *People v Goodin*, 257 Mich App 425, 433; 668 NW2d 392 (2003).

Affirmed.

/s/ Pat M. Donofrio
/s/ Joel P. Hoekstra
/s/ Jane E. Markey